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UNITED STATES DISTRICT COURT  
 DISTRICT OF MASSACHUSETTS (EASTERN DIVISION)

SUSAN L. ZEIGLER,  
 Plaintiff,

vs.

HARTFORD LIFE AND ACCIDENT  
 INSURANCE COMPANY  
 Defendant.

Docket No:

05-11320 NG

**PLAINTIFF'S COMPLAINT**

MAGISTRATE JUDGE Collings

NOW COMES Susan L. Zeigler, by and through her attorneys PHILLIPS & GARCIA, LLP and brings this cause of action pursuant to § 502(a)(1)(B) of the Employee Retirement Income Security Act of 1974 alleging as follows:

**THE PARTIES**

1. Plaintiff, Susan L. Zeigler ("Zeigler") is an individual residing at 10 Avenue A, Riverside, Rhode Island.
2. Defendant, Hartford Life and Accident Insurance Company ("Hartford") is a corporate entity with a principal place of business located at 200 Hopmeadow Street, Simsbury, CT 06089. Hartford is an insurance and financial services company that provided administration services of an employee benefits plan for Zeigler's employer, Wal-Mart Stores, Inc.

**JURISDICTION AND VENUE**

3. The present action is one brought under the Employee Retirement Income Security Act of

1974 (“ERISA”). This Court has subject matter jurisdiction over this action pursuant to § 502 (e)(1) of the ERISA, 29 USC § 1132(e)(1) and 28 USC § 1331.

4. Venue is proper in this judicial district pursuant to § 502(e)(2) of the ERISA, 29 USC §1332(e)(2), and 28 USC. §§ 1391(b)(1), (b)(2) and (c) because a substantial part of the events or omissions giving rise to this claim occurred in this judicial District, and because the Hartford transacts business in this District and is subject to its personal jurisdiction.

#### **FACTS GIVING RISE TO THE COMPLAINT**

5. At all times material herein Zeigler was an active, full-time hourly employee of Wal-Mart Stores, Inc. (“Wal-Mart”) since November, 1994. Wal-Mart operates a national chain of discount retail stores. Zeigler worked at the Wal-Mart retail store at 1180 Fall River Avenue in Seekonk, Massachusetts, Store #2184. Zeigler was employed as an hourly associate receiving shipments at the store.
6. While working for Wal-Mart, Zeigler worked at least 40 hours per week in the usual course of Wal-Mart’s business. At all times material herein, Zeigler was actively at work for Wal-Mart because she performed, in the usual way, all of the regular duties of her job on a full-time basis.
7. At all times material herein, Wal-Mart provided its employees, including Zeigler, an employee benefit plan called the Wal-Mart Stores, Inc. Associates Health and Welfare Plan (the “Plan”), Plan Number 71-0415188-501.
8. Under the Plan, Wal-Mart provided long term income protection to eligible employees upon disability from a covered accident, sickness or pregnancy (“Long Term Disability” or “LTD”). Under the terms of the Plan, Wal-Mart was responsible to pay LTD benefits

of 60% of an eligible employee's average monthly wage less any other income benefits such as Workers' Compensation and/or Social Security Benefits.

9. On or about December 16, 1996, and continuing, Zeigler was an eligible employee entitled to the benefits under the Plan and was a "beneficiary" as that term is defined in ERISA § 3(8).
10. At all times material herein, LTD claims were administered by Hartford. As administrator, Hartford was delegated the right to make determinations concerning the LTD benefits payable according to the terms and conditions of the Plan.
11. On December 14, 1996, Zeigler, while in the course of her employment, was injured when a box fell approximately 20 to 25 feet from a shelf landing on her. Subsequently, Zeigler received extensive medical treatment, including surgery, for thoracic outlet syndrome.
12. In addition to the injuries suffered in the December 14, 1996 accident, Zeigler had been suffering and continues to suffer from panic attacks and agoraphobia.
13. The combination of the medical conditions referred to in the preceding paragraphs left Zeigler totally disabled and unable to perform her regular duties at work. Zeigler has been found to be totally disabled by her physicians. Zeigler remains totally disabled.
14. In November 1999, and in accordance with the reporting requirements of the Plan, Zeigler filed a claim for LTD with Hartford and requested payment of LTD benefits. Zeigler (or someone acting on her behalf) provided medical information to Hartford.
15. Since November 1999, Zeigler, or someone acting on her behalf, contacted the Hartford and requested that Hartford notify Zeigler of its determination of her LTD claim.

16. Despite Zeigler's requests, the Hartford did not respond to Zeigler's claim.
17. Subsequently, Zeigler filed an action in this District Court to enforce her rights under the ERISA. That action was dismissed without prejudice by agreement of the parties, and the Hartford considered and reviewed Zeigler's claim.
18. Ultimately, in a May 21, 2004 letter to Zeigler, the Hartford approved Zeigler's claim for a closed, one year period of June 28, 1997 through June 27, 1998. In this letter, however, the Hartford denied her claim for LTD benefits beyond June 27, 1998.
19. Pursuant to the ERISA, Zeigler then administratively appealed this decision to the Hartford and has exhausted all administrative remedies available under the Plan.
20. In an April 7, 2005 letter, the Hartford denied Zeigler's appeal and again determined that Zeigler was not disabled and entitled to LTD benefits.

#### **COUNT I**

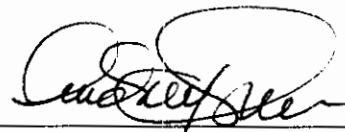
21. Zeigler repeats and reavers the allegations contained in the preceding paragraphs of this Complaint.
22. At all times, Zeigler was a "beneficiary" under the Plan as that term is defined in ERISA § 3(8) and was entitled to the payment of long term disability benefits as defined under the Plan.
23. At all times after January 1, 1997, Zeigler was totally disabled from work because she was prevented from performing the essential duties of her occupation due to sickness, all as defined under the terms of the Plan. Zeigler remains totally disabled and is unable to perform the essential duties of any occupation for which she may be qualified by training, education or experience.

24. At all times material herein, Hartford, acting on behalf of Wal-Mart, has wrongfully denied benefits under the Plan to Zeigler in violation of § 502(a)(1)(B) of the ERISA. Hartford continues to wrongfully deny the long term disability benefits to which Zeigler is entitled.
25. As a result of Hartford's wrongful denial of benefits, Zeigler has suffered damages and is rightfully entitled to those benefits.

WHEREFORE, Zeigler prays for the following relief:

- a) that the Court award damages for the benefits to which she is entitled under the Plan and interest thereon;
- b) that the Court award payment of reasonable attorneys' fees, costs and expenses associated with this litigation; and
- c) that the Court award any other relief that it deems just and equitable.

Respectfully submitted  
On behalf of the Plaintiff,



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Andrew J. Garcia, MA BBO # 559084  
Carlin J. Phillips, MA BBO# 561916  
PHILLIPS, & GARCIA, LLP  
13 Ventura Drive  
N. Dartmouth, MA 02747  
(508) 998-0800  
(508) 998-0919 (facsimile)

Dated: June 21, 2005



## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Susan L. Zeigler

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Andrew J. Garcia, BBO # 559084  
13 Ventura Dr., N. Dartmouth, MA 02747

## DEFENDANTS

Hartford Life &amp; Accident Insurance Co.

County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

Attorneys (If Known)

05-11810 NG

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                                       |                                       |   |                            |                            |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
|   | PTF                                   | DEF                                   |   | PTF                        | DEF                        |
| Citizen of This State                   | <input type="checkbox"/> 1            | <input type="checkbox"/> 1            | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input checked="" type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input checked="" type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

§ 502(a)(1)(B)

Brief description of cause:

This is an ERISA case for the denial of LTD benefits.

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

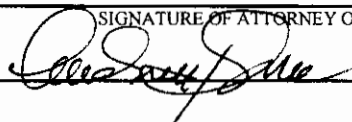
JUDGE

DOCKET NUMBER

DATE

June 21, 2005

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Susan L. Zeigler vs. Hartford Life & Accident Ins. Co.

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- ☐ I. 160, 410, 470, 535, R.23, REGARDLESS OF NATURE OF SUIT.
- ☒ II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, \*Also complete AO 120 or AO 121 for patent, trademark or copyright cases  
740, 790, 791, 820\*, 830\*, 840\*, 850, 890, 892-894, 895, 950.
- ☐ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 480, 490, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES ☒ NO ☐

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES ☐ NO ☒

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐ NO ☒

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES ☐ NO ☒

7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES ☒ NO ☐

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division ☒ Central Division ☐ Western Division ☐

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division ☐ Central Division ☐ Western Division ☐

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES ☐ NO ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Andrew J. Garcia

ADDRESS 13 Ventura Drive, N. Dartmouth, MA 02747

TELEPHONE NO. 508-998-0800